

AMENDED IN SENATE JUNE 9, 2016
AMENDED IN ASSEMBLY APRIL 20, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2337

Introduced by Assembly Member Burke

February 18, 2016

An act to amend Section 230.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2337, as amended, Burke. Employment protections: victims of domestic violence, sexual assault, or stalking.

Existing law prohibits an employer with 25 or more employees from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for specified purposes related to addressing the domestic violence, sexual assault, or stalking. Existing law provides that any employee who is discharged, threatened with discharge, demoted, suspended, or in any manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for those purposes is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief, and is allowed to file a complaint with the Division of Labor Standards Enforcement within the Department of Industrial Relations. Existing law establishes the Labor Commissioner as the head of the Division of Labor Standards Enforcement.

This bill would require employers to inform each employee of his or her rights established under those laws by providing ~~that specific~~ information in writing to new employees upon hire and to other employees upon request. The bill would also require the Labor Commissioner *Commissioner, on or before July 1, 2017*, to develop a form ~~that employers could~~ *an employer may elect to use* to comply with these provisions and to post it on the commissioner's Internet Web site. *Employers would not be required to comply with the notice of rights requirement until the commissioner posts the form.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 230.1 of the Labor Code is amended to
2 read:
3 230.1. (a) In addition to the requirements and prohibitions
4 imposed on employees pursuant to Section 230, an employer with
5 25 or more employees shall not discharge, or in any manner
6 discriminate or retaliate against, an employee who is a victim of
7 domestic violence, sexual assault, or stalking for taking time off
8 from work for any of the following purposes:
9 (1) To seek medical attention for injuries caused by domestic
10 violence, sexual assault, or stalking.
11 (2) To obtain services from a domestic violence shelter,
12 program, or rape crisis center as a result of domestic violence,
13 sexual assault, or stalking.
14 (3) To obtain psychological counseling related to an experience
15 of domestic violence, sexual assault, or stalking.
16 (4) To participate in safety planning and take other actions to
17 increase safety from future domestic violence, sexual assault, or
18 stalking, including temporary or permanent relocation.
19 (b) (1) As a condition of taking time off for a purpose set forth
20 in subdivision (a), the employee shall give the employer reasonable
21 advance notice of the employee's intention to take time off, unless
22 the advance notice is not feasible.
23 (2) When an unscheduled absence occurs, the employer shall
24 not take any action against the employee if the employee, within
25 a reasonable time after the absence, provides a certification to the
26 employer. Certification shall be sufficient in the form of any of

1 the categories described in paragraph (2) of subdivision (d) of
2 Section 230.

3 (3) To the extent allowed by law and consistent with
4 subparagraph (D) of paragraph (7) of subdivision (f) of Section
5 230, employers shall maintain the confidentiality of any employee
6 requesting leave under subdivision (a).

7 (c) An employee who is discharged, threatened with discharge,
8 demoted, suspended, or in any other manner discriminated or
9 retaliated against in the terms and conditions of employment by
10 his or her employer because the employee has taken time off for
11 a purpose set forth in subdivision (a) is entitled to reinstatement
12 and reimbursement for lost wages and work benefits caused by
13 the acts of the employer, as well as appropriate equitable relief.
14 An employer who willfully refuses to rehire, promote, or otherwise
15 restore an employee or former employee who has been determined
16 to be eligible for rehiring or promotion by a grievance procedure
17 or hearing authorized by law is guilty of a misdemeanor.

18 (d) (1) An employee who is discharged, threatened with
19 discharge, demoted, suspended, or in any other manner
20 discriminated or retaliated against in the terms and conditions of
21 employment by his or her employer because the employee has
22 exercised his or her rights as set forth in subdivision (a) may file
23 a complaint with the Division of Labor Standards Enforcement of
24 the Department of Industrial Relations pursuant to Section 98.7.

25 (2) Notwithstanding any time limitation in Section 98.7, an
26 employee may file a complaint with the division based upon a
27 violation of subdivision (a) within one year from the date of
28 occurrence of the violation.

29 (e) An employee may use vacation, personal leave, or
30 compensatory time off that is otherwise available to the employee
31 under the applicable terms of employment, unless otherwise
32 provided by a collective bargaining agreement, for time taken off
33 for a purpose specified in subdivision (a). The entitlement of any
34 employee under this section shall not be diminished by any term
35 or condition of a collective bargaining agreement.

36 (f) This section does not create a right for an employee to take
37 unpaid leave that exceeds the unpaid leave time allowed under, or
38 is in addition to the unpaid leave time permitted by, the federal
39 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et
40 seq.).

1 (g) For purposes of this section:

2 (1) “Domestic violence” means any of the types of abuse set
3 forth in Section 6211 of the Family Code, as amended.

4 (2) “Sexual assault” means any of the crimes set forth in Section
5 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,
6 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,
7 as amended.

8 (3) “Stalking” means a crime set forth in Section 646.9 of the
9 Penal Code or Section 1708.7 of the Civil Code.

10 (h) (1) Employers shall inform each employee of his or her
11 rights established under this section ~~by providing that and~~
12 ~~subdivisions (c), (e), and (f) of Section 230 in writing. The~~
13 ~~information-in-writing shall be provided to new employees upon~~
14 hire and to other employees upon request.

15 (2) The Labor Commissioner shall develop a form that an
16 employer may use to comply with the notice requirements in
17 paragraph (1). The form shall set forth the rights and duties of
18 employers and employees under this section in clear and concise
19 language. The Labor Commissioner shall post this form on the
20 commissioner’s Internet Web site to make it available to employers
21 who are required to comply with this section. If an employer elects
22 not to use the form developed by the Labor Commissioner, the
23 notice provided by the employer to the employees shall be
24 substantially similar in content and clarity to the form developed
25 by the Labor Commissioner. *The Labor Commissioner shall*
26 *develop the form and post it in accordance with this paragraph*
27 *on or before July 1, 2017.*

28 (3) *Employers shall not be required to comply with paragraph*
29 *(1) until the Labor Commissioner posts the form on the*
30 *commissioner’s Internet Web site in accordance with paragraph*
31 *(2).*